

SUBJECT: Sunset review of Office of Fire Fighters' Pension Commissioner

COMMITTEE: Pensions — favorable, without amendment

VOTE: 5 ayes — Callegari, Alonzo, Branch, Frullo, Stephenson

0 nays

2 absent — Gutierrez, P. King

SENATE VOTE: On final passage, May 14 — 29-2 (Hinojosa, Whitmire)

WITNESSES: *(On House companion bill, HB 3148:)*  
For — *(Registered, but did not testify: Scott Kerwood, Texas Fire Chiefs Association)*

Against — Heidle Baskin, Irving Firemen's Relief & Retirement Fund; Kenneth Gold, Denton Firemen's Relief & Retirement Fund; Rodney Goodman, Abilene Firemen's Relief and Retirement Fund; Javier Gutierrez and Manuel Vargas, McAllen's Relief and Retirement Fund; Alva Littlejohn, Lubbock Fire Pension Fund; David Stacy, Midland Firemen's Relief and Retirement Fund; *(Registered, but did not testify: Danny Benson and Michael Tucker, Denton Firefighters Association; Baker Bryant and Eddie Chrane, Abilene Firemen's Relief and Retirement Fund; David Crow, Arlington Professional Fire Fighter's Association; Mike Higgins, Texas State Association of Fire Fighters; Quentin Huser and Jerry Sutton, TLFFRA; Juan Loya; Roberto Martinez; Derek Oswald, Denton Firemen's Relief & Retirement Fund; Baldomero Ozuna; Tim Rabroker, Killeen Firefighters Relief & Retirement)*

On — Mark Fenlaw and Maxie Patterson, TESRS Board of Trustees; Christopher Hanson, Pension Review Board; Sean Shurtleff, Sunset Advisory Commission; Ana Tinsley and Sherri Walker, Fire Fighters' Pension Commissioner; *(Registered, but did not testify: Scott Kerwood, Texas Fire Chiefs Association; Joe Walraven, Sunset Advisory Commission)*

**BACKGROUND:** Created in 1937, the Office of Fire Fighters' Pension Commissioner performs two basic activities: monitoring and assisting 122 individual local pension plans organized under the Texas Local Fire Fighters' Retirement Act (TLFFRA) and administering a separate statewide system for more than 200 volunteer departments, known as the Texas Emergency Services Retirement System (TESRS).

The office monitors systems operating under TLFFRA in the following ways:

- requires annual reporting from local fire department pension systems and reviews pension benefits;
- decides pension member appeals of benefit decisions by local pension boards;
- provides technical assistance and legal interpretations of statute and other aspects of systems; and
- conducts training for local board trustees through its annual TLFFRA educational conference and peer review workshop.

The office also administers TESRS, created in 1977 to provide retirement as well as death and disability benefits to volunteer firefighters and emergency services personnel.

The commissioner is appointed by the governor with the consent of the Senate for a four-year term. The commissioner sets policy and manages the office's efforts to assist certain paid and volunteer fire departments under TLFFRA. The commissioner also serves as the administrator of TESRS, while a separate governor-appointed board of trustees sets policy for the system and manages the fund's assets.

The office employs nine staff, with four working on TLFFRA and five on administration of TESRS. The office operated on a budget in fiscal 2011 of about \$683,000, with about \$486,000 spent on TESRS and about \$197,000 for TLFFRA assistance.

The office is subject to the Sunset Act and will be abolished September 1, 2013, unless continued by the Legislature.

**DIGEST:** SB 220 would abolish the Office of Fire Fighters' Pension Commissioner and require the State Pension Review Board (PRB) to provide assistance to local TLFFRA plans. It would make changes to the process for hearing

appeals from members of both plans and would require TESRS to conduct actuarial audits to better guide decisions about the state's contribution to the fund.

**TLFFRA plans.** The PRB would be required to provide technical assistance, training, and information to trustees of local TLFFRA plans, and if possible, to designate a person to perform these duties, targeting the needs of small-to-medium-sized plans.

It would require appeals under TLFFRA to go through the PRB before being referred to the State Office of Administrative Hearings (SOAH) to decide the case.

**TESRS system.** The bill would continue the nine-member governing board and would set aside one of five positions held by pension system members for a retiree.

The bill would require the TESRS board to hire an executive director to oversee benefits distribution and collect revenue from the governing bodies of participating departments. Appeals under TESRS would be submitted to SOAH, with the TESRS board making the final decision, and allowing for judicial review.

The TESRS board, instead of the commissioner, would be responsible for recovering any fraudulently acquired benefits. Biennial certification of the fund's actuarial soundness would have to include analysis of the number of years to amortize the unfunded liability, assuming no state contribution and assuming the maximum state contribution. An audit would be required every five years.

The bill would require the board to notify the Legislature and PRB if there were a significant change to the actuarial valuation of the pension system's assets or liabilities or any change to members' contributions and benefits.

SB 220 would require the TESRS board to adopt a clear policy on contract management and oversight. It would apply standard, across-the-board Sunset recommendations regarding complaints, conflicts of interest, public participation, and board member training.

The TESRS board would be subject to Sunset review every 12 years.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

SB 220 would implement recommendations of the Sunset Commission review, which found that the special treatment the office provides to local TLFFRA plans is outdated and that needed oversight and assistance can be provided without having a separate office.

The review also found that the state continues to need the statewide TESRS system but a separate governor-appointed commissioner was not needed to administer that system.

The office's role in TLFFRA has diminished over time due to legislative changes and the growing independence of these systems. When the state stopped providing financial assistance to these systems in 1988, it removed the primary reason for commissioner oversight. The TLFFRA statute provides a framework for these systems that offers safeguards for their long-term operation.

Understandably, many TLFFRA systems want to keep the commissioner's office because of the assistance provided. However, the systems could receive similar assistance through a dedicated staff person at the PRB.

The commissioner's role in TLFFRA appeals is not necessary to settle local pension disputes. SOAH already hears these cases and could continue to do so without the involvement of the commissioner.

Since 2002, the state has paid \$12.8 million in TESRS contributions and administrative costs, mostly to cover investment losses. SB 220 would provide greater oversight, verification, and reporting on the fund to ensure the Legislature had accurate and timely information needed to make funding decisions.

The bill would save \$173,838 in fiscal 2014-15 by eliminating some positions, according to the Legislative Budget Board.

**OPPONENTS  
SAY:**

For the past 75 years, the Fire Fighter's Pension Commissioner has protected firefighters, cities, and the state regarding local firefighter pension systems. SB 220 would unravel this protection and create substantial problems for small volunteer firefighter plans.

The stakes are high for these plans, the cities that sponsor them, and ultimately the state. A poorly run plan could bankrupt a small city and possibly require the state to step in. The independent appointment of the commissioner is a healthy check and balance for the state regarding the operation of both the systems in TLFFRA and TESRS, all of which are managed locally by firefighters.

Representatives of several pension funds testified about the valuable assistance and attention they receive from the commissioner. Without the office, they could have to hire lawyers and financial experts to answer their questions. The firefighters expressed concern that they would not get the same attention at PRB, where they would be the "little fish in a big pond."

PRB has never administered a pension plan. The commissioner daily administers TESRS and uses that expertise to advise TLFFRA. It is managerially efficient and fiscally responsible to keep firefighter pension services together under one agency.

The bill would require PRB to dedicate one employee to assisting TLFFRA plans, if funds are available. The commissioner now has four employees assisting these plans.

For appeals regarding TLFFRA benefit issues, the bill would make PRB merely a conduit to have the case sent to SOAH. Currently, SOAH decisions are reviewed by the commissioner. At least one of the SOAH decisions was found to be in error and the commissioner was able to step in and have the error corrected.

NOTES:

SB 220 would result in savings of about \$173,000 in general revenue and a reduction of 3.5 FTE positions in each year of fiscal 2014-15, according to the Legislative Budget Board. Total savings would be offset by the estimated cost of the PRB designating a staff person to provide training and technical assistance to local firefighter plans.

The bill would continue the duties and responsibilities of TESRS for the cost of about \$500,000 and five FTE positions per year. It would require additional actuarial services, including an actuarial audit every five years at an estimated cost to the pension fund of about \$100,000 over the next five years.

The House companion bill, HB 3148 by Anchia, was reported favorably as substituted by the House Pensions Committee on April 22.